

IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF PENNSYLVANIA

WISEMAN OIL CO., INC.,)
ESTATE OF JOSEPH WISEMAN,)
ESTATE OF RUTH N. WISEMAN,)
EILEEN FANBURG, AS)
EXECUTRIX)
)
Plaintiffs,)
)
v.)
)
TIG INSURANCE CO. F/K/A)
TRANSAMERICA INSURANCE)
CO.)
)
Defendant.)

Civil Action No. 011-1011
U.S. District Judge Joy Flowers Conti
Chief Magistrate Judge Lisa Pupo Lenihan

**MEMORANDUM ORDER ON
DEFENDANT'S MOTION FOR JUDGMENT ON THE PLEADINGS**

The Complaint in the above captioned case was received by the Clerk of Court on August 4, 2011 and was referred to United States Chief Magistrate Judge Lisa Pupo Lenihan for pretrial proceedings in accordance with the Magistrate Judges Act, 28 U.S.C. §636(b)(1), and Local Rules of Court 72.C and 72.D.

The Chief Magistrate Judge's Report and Recommendation filed on May 29, 2012, recommended that the Motion for Judgment on the Pleadings filed by Defendant, and premised on

various statute of limitations grounds, be denied.

Service was made on all counsel of record. The parties were informed that in accordance with the Magistrate Judges Act, 28 U.S.C. § 636(b)(1)(B) and (C), and Rule 72.D.2 of the Local Rules of Court, that they had fourteen (14) days to file any objections. Defendant's Objections and Plaintiff's Response to those Objections were timely filed with respect to the Report and Recommendation.

After review of the pleadings and documents in the case, together with the Report and Recommendation, the court finds the extensive, but largely, reiterated arguments contained in Defendant's Objections unpersuasive¹ and that the reasons for rejecting those arguments are fully explained in the Report and Recommendation, including illustrative distinctions between language sufficient and insufficient to constitute a clear and unequivocal denial of coverage. For the reasons set forth in the Report and Recommendation, the following Order is entered:

AND NOW, this 17th day of July, 2012,

¹ While this court is not required to, and does not generally, respond to every legal argument presented in a party's briefing, because Defendant reargues in its Objections its assertion that language of the complaint's allegations should be read to time-bar the claims, the court directs Defendant to the more-apt analysis – regarding the usage and meaning of the term “immediately and entirely” in an insurance context, and statute of limitations analysis under current case law – contained in Plaintiff's prior briefing on the Motion for Judgment. See also Transcript of April 5, 2012 Oral Argument; Plaintiff's Response to Defendant's Objections at 10-12.

The additional decisions relied upon by Defendant in its Objections with respect to the claim for declaratory judgment are inapposite. See Plaintiff's Response at 12-14 (including citations to Transcript of Oral Argument).

IT IS HEREBY ORDERED that the Motion for Judgment on the Pleadings filed by Defendant is **DENIED**.

IT IS FURTHER ORDERED that the Report and Recommendation of Chief Magistrate Judge Lenihan, dated May 29, 2012, is adopted as the opinion of the Court.

/s/Joy Flowers Conti
Joy Flowers Conti
United States District Judge